

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SWEETWATER UNION HIGH SCHOOL DISTRICT,	OAH CASE NO. 2012050894 (Primary)
SWEETWATER UNION HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012101142 ORDER GRANTING DISTRICT'S REQUEST FOR CONTINUANCE AND CONSOLIDATING CASES

On May 18, 2012, Student filed with the Office of Administrative Hearings (OAH) a request for due process hearing, OAH case number 2012050894 (First Case), naming the Sweetwater Union High School District (District). On July 24, 2012, Student filed a third amended due process request as permitted by OAH order, alleging that Student was denied a FAPE for the 2010-2011 and 2011-2012 school years. OAH served three separate scheduling orders on May 22, July 3, and July 25, 2012, setting forth due process prehearing rules and the requirements for preparation and timely service of documentary evidence.

On September 10, 2012, Student and District filed a joint request for continuance to mutually agreed upon dates. The prehearing conference (PHC) in the First Case was set for November 5, 2012, and the hearing was scheduled for November 13-15, 26-27, 2012.

On October 31, 2012, District filed a due process hearing request, OAH case number 2012101142, naming Student, and alleging that it provided Student a FAPE during the 2011-2012 school year. District concurrently filed a motion to consolidate these cases on the grounds that they involve common questions of fact and law, and that consolidation will eliminate the possibility of inconsistent decisions. The PHC in the Second Case was scheduled for November 19, 2012, and the hearing was scheduled to begin on November 29, 2012.

On November 2, 2012, Student filed opposition on several grounds including that consolidation will result in delay. On November 5, 2012 OAH issued an order denying consolidation.

The PHC in the First Case was held November 5, 2012, which was also the fifth business day before the hearing. On November 7, 2012 District filed a request to continue the dates in this matter based upon Student's failure to comply with the scheduling orders requiring Student to serve District his exhibits with a table of contents, properly paginated, pre-marked and tabbed and the failure to serve the exhibits at least five (5) business days before the hearing in accordance with Education Code section 56505, subdivision (e)(7). District contends that (1) Student served by U.S. mail on November 6, 2012, four business days before the hearing, over 700 pages of documents that were not pre-marked, tabbed, paginated, or accompanied by a table of contents; and (2) Student served an additional 100 pages by electronic mail (e mail) to District's e mail address after 5:00 p.m. on November 6, 2012. District asserts that Student's failure to comply with the numerous scheduling orders has impaired its ability prepare for the hearing scheduled to start on November 13, 2012.

On November 8, 2012, Student opposed the request on grounds that a continuance will prejudice Student and cause undue delay of the hearing. Student contends he properly and timely complied with the scheduling order because he served documents in the order they were maintained by Parent in the regular course of business.

As will be discussed below District has shown good cause to continue the hearing. In addition, based upon the facts and the discussion below, consolidation of the First and Second case is warranted and consolidation is ordered.

Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

The history of the First Case establishes that OAH provided Student substantial notice of the due process prehearing requirements. Furthermore, Student represented his readiness to proceed to hearing on the current dates by his participation in the PHC on November 5, 2012. However, Student's failure to timely and properly serve his evidence on District shows he is not prepared for hearing. Student is required to follow the standards set forth for prehearing readiness under the IDEA, Education Code, the California Code of Regulations, and OAH orders. Student has not done so, and instead, wrongly cites to the inapplicable standard for production of documents under the California Code of Civil Procedure. Furthermore, his noncompliance has prejudiced District's ability to prepare and go forward on the currently scheduled dates, such that Student is the cause of any delay.

Here, based upon the facts good cause has been established to continue the hearing in order for Student to comply with proper document exchange and to give District a fair amount of time to prepare for hearing. District's request to continue the hearing to November 26-27, 2012 is granted. Student is also ordered to properly serve District with its documentary evidence, consistent with the standards set forth in the PHC order (organized, tabbed, pre-marked, paginated, tabbed, etc...), no later than Thursday November 14, 2012. As discussed below, OAH has reconsidered consolidation in light of the delay, such that a PHC shall be scheduled for Monday November 19, 2012 at 10:00 a.m. at which time Student shall provide proof of compliance with this order. For purposes of preparing for that PHC, Student shall provide District with documents and witness lists applicable to both the First Case and the Second Case by November 14, 2012. Failure to comply shall result in the scheduling of an Order to Show Cause re: Sanctions against Student.

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Here, Student's complaint alleges that District failed to identify and address Student's academic, social/emotional, functional, behavioral, mental health and transition service needs in 2010-2011 and 2011-2012, thereby denying Student a FAPE for those academic years. District's complaint seeks a finding that Student was provided a FAPE during the 2011-2012 school year, which is an issue already raised in Student's case. These matters involve common questions of law and fact. Moreover, consolidation of these matters furthers the interests of judicial economy by saving time and preventing inconsistent rulings. Consolidation is especially appropriate here because the PHC in Second case is scheduled for

November 19, 2012 and due process hearing is scheduled to start November 29, 2012, dates that are consistent with the delay caused by Student in the First Case.

ORDER

1. OAH Case No. 2012050894 (First Case) and OAH Case No. 2012101142 (Second Case) are consolidated for hearing.
2. All dates in OAH Case No. 2012101142 are vacated.
3. OAH Case No. 2012050894 (First Case) is designated as the primary case.
4. OAH has reviewed the request to continue the hearing in the First Case for good cause and considered all relevant facts and circumstances. The request is granted and the consolidated cases will proceed as scheduled below:

Prehearing Conference: November 19, 2012 at 10:00 AM
Due Process Hearing: November 26-29, 2012 starting on the first day at 1:30 PM, at 9:30 AM on other days, and continuing day to day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge.

5. By November 14, 2012, Student shall serve on District all documents it intends to rely on at the consolidated hearing, in a form consistent with that required by the PHC order in the First Case.

6. For purposes of the PHC on November 19, 2012, both parties shall file updated PHC statements that address the issues and evidence in the consolidated cases.

IT IS SO ORDERED.

Dated: November 08, 2012

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings